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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------------------|-------------|----------------------|---------------------|------------------|
| 09/782,089 | 02/12/2001 | James B. Carroll JR. | P/12-816 | 9721 |
| 2352 | 7590 | 08/12/2004 | EXAMINER | |
| OSTROLENK FABER GERB & SOFFEN | | | ST CYR, DANIEL | |
| 1180 AVENUE OF THE AMERICAS | | | | |
| NEW YORK, NY 100368403 | | | ART UNIT | PAPER NUMBER |
| | | | 2876 | |

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) |
|------------------------------|-----------------|----------------|
| | 09/782,089 | CARROLL ET AL. |
| | Examiner | Art Unit |
| | Daniel St.Cyr | 2876 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 29 January 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-12 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

Response to Arguments

1. In view of the Appeal filed on 1/29/04, PROSECUTION IS HEREBY REOPENED. The Office action is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Falcoff et al, US Patent No. 4,403,866, in view of Phillips et al, US Patent No. 6,241,858.

Falcoff et al disclose a process for making paints comprising: an interference effect pigment reactor 13; a flow cell in communication with the reactor adapted to receive and orient a sample of pigment from the reactor; and a colorimeter, interface with said flow cell for measuring the characteristics of the flow cell sample, such as L*, a* and b* values of the paint being prepared. (see figure 1, col. 3, line 49 to col. 4, line 10).

Falcoff et al teach that it is possible to determine a spectral curve of a color with a spectrometer, but fail to disclose or fairly suggest using goniospectrophotometer for evaluating the light reflected from the pigment of the flow cell.

Phillips et al disclose a method and apparatus for producing enhanced interference pigments comprising: means for establishing color difference by measuring the L*, a* and b* values of the light beams, wherein a goniospectrophotometer is used at angles 10-60 degrees for taking the measurements; a very thin coating of mica (about 1 mil thick) is used on the surface material of TiO₂ (high refractive index material) to produce the best chromatic colors (see col. 17, lines 12-65 and col. 18, lines 28-51).

In view of the Phillips et al's teachings, it would have been obvious for a person of ordinary skill in the art at the time the invention was made to modify the teaching of Falcoff et al to employ a goniospectrophotometer in lieu of the colorimeter for describing color shifting pigments (i.e. light interference pigment) and using a thin coat of mica for producing better chromatic colors. Such modification would make the system more effective wherein

measurements would be taken at multi-angle geometry so that comparison of pigments is simulated to provide more accurate results. such modification would have been an obvious extension as taught by Falcoff et al.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kettler et al, US Patent No. 5,929,998. Numata et al, US Patent No. 6,539,325.

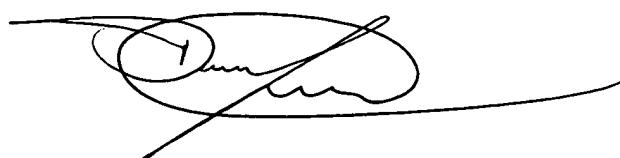
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel St.Cyr whose telephone number is 571-272-2407. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on 571-272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel St.Cyr
Primary Examiner
Art Unit 2876

DS
August 7, 2004

A handwritten signature in black ink, appearing to read "Daniel St.Cyr", is written over a stylized, swooping line that serves as a signature base. The signature is written in a cursive, fluid style.